



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/174055

PRELIMINARY RECITALS

Pursuant to a petition filed May 3, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the Rock County Dept. of Social Services to recover child care assistance (CC), a hearing was held on June 22, 2016, at Janesville, Wisconsin, with the judge appearing by telephone. A hearing set for May 25, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid CC because she failed to report accurate household members.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner applied for FoodShare (FS) on August 27, 2015. She reported a household of herself and her two children. Petitioner was granted FS for the month of September.

3. In mid-September petitioner reported that she would be returning to work, and she requested CC. A CC authorization started effective October 18, the date petitioner reported that her children began to attend.
4. On October 19, 2015 the county child support agency notified the economic support worker that the father of petitioner's children was reported to be living with petitioner. The county then started an investigation of the household.
5. On November 11 petitioner provided a note signed by her and the father saying that he does not live with her. CC continued, but the county still requested verification of the father's residence.
6. On December 1 the investigation report was filed; it concluded that the father lived in the household continuously. Child care closed at the end of November because of lack of verification.
7. By a notice dated March 21, 2016 the county informed petitioner that she was overpaid \$1,023.14 CC in October and November, 2015 because she reported inaccurate household members, claim no. [REDACTED]

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of CC overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A CC household must include parents living in the household. CC Policy Manual, §1.4.1. Obviously if the father was in the home he should have been included.

Petitioner's boyfriend was included on her lease and he reported he lived with her to the child support agency. Petitioner testified that after the second child was born they experienced a rough patch and in August he moved out to, she guessed, his mother's home. Then in November things smoothed out and he moved back in, which is why she let the child care case close.

I could potentially believe petitioner's testimony except that it does not pass the "smell test." It simply is too incredible that they should have this difficulty immediately after their second child was born when petitioner was off work on maternity leave. Her neighbor was unaware that her boyfriend has moved out, which suggests that he still came and went as usual. Petitioner admitted that he spent substantial time at the household even after the alleged break-up. Most troubling to me is that petitioner testified that he moved back in November and then she let the child care case close. However, the record shows that on November 11 she gave the county a letter insisting that he did not live with her. She did not report that he moved back at any time. Child care closed because the investigation report was filed, not because petitioner reported him back in the home.

At worst petitioner and her boyfriend decided to supplement their income by reporting him out of the household when he was not. At best petitioner's boyfriend temporarily moved out but still remained active in the household. Under those circumstances his contribution should have been reported to the agency. I conclude, therefore, that the county appropriately seeks recovery of the CC paid in October and November because the father of petitioner's children should have been reported in the household.

CONCLUSIONS OF LAW

The county correctly determined a CC overpayment because petitioner did not report her household accurately when she applied for the benefits.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of July, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 5, 2016.

Rock County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud